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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/961,365	09/25/2001	Kazumasa Ayukawa	P21475	5941

7055 7590 07/11/2003

GREENBLUM & BERNSTEIN, P.L.C.  
1950 ROLAND CLARKE PLACE  
RESTON, VA 20191

EXAMINER

CHARLES, MARCUS

ART UNIT	PAPER NUMBER
3682	

DATE MAILED: 07/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/961,365	AYUKAWA ET AL.
	Examiner Marcus Charles	Art Unit 3682

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 17 April 2003.

2a) This action is **FINAL**.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

4) Claim(s) 1-20 is/are pending in the application.

4a) Of the above claim(s) 5 and 7-20 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-4 and 6 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 25 September 2001 is/are: a) accepted or b) objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

    If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2, 3 & 9.

4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.

5) Notice of Informal Patent Application (PTO-152)

6) Other: 3, 4 & 9.

## DETAILED ACTION

This action is responsive to the election filed 04-17-2007, which has been entered.

Claims 1-20 are currently pending.

### *Election/Restrictions*

1. Applicant's elections traverse of in Papers No. 6 and 8 are acknowledged.

Applicant's election with traverse of species I and Group I in Paper No. 6 and 8 is acknowledged. The traversal is on the ground(s) that the search for each species would overlap and would not be a burden for the examiner. This is not found persuasive because each of the species and the groups belong to a different class in the manner of which they are claimed. Therefore, it would be a burden to the examiner to search each group belonging to a particular class and in the process four tensioners would have to be searched individually.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 7-20 withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Papers No. 6 and 8.

3. In addition, the examiner has withdrawn claim 5 because the claim does not read on species I. The damper in species 1 does not engage the rocking arm and frictionally slide with the base as disclosed in claim 5. However if and when claim 1 is allowed claim 5 will be rejoined.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-4 and 6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 recites the limitation "the first damping force" and "the second damping force in lines 13-14. In addition, in claim 3, recites the limitation, "the outer circumferential surface" and "the inner circumferential surface". There is insufficient antecedent basis for these limitations in the claims.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-4 are rejected under 35 U.S.C. 102(a) as being anticipated by JP(05-83516). JP(05-83516, applicant's prior art) discloses a tensioner comprising a base (20) having a tubular shaped bottom, a rocking arm (30) having a tubular part rotatably supported inside the base, a pulley (10) attached to the rocking arm, a torsion spring housed in the base and biases the rotation of the rocking arm to tension a belt, wherein the torsion spring is attached concentrically to the axial axis of the base. It is apparent

that a first damping force acting on the arm when the belt is in tension is relatively larger than a second damping force acting on the arm when the belt is slack.

In claim 2, it is apparent that the rocking arm is removably attached to the base via the fastening assembly (35).

In claim 3, note the friction member (21) interposed between outer circumferential surface of the tubular part of the arm and the inner tubular part base member and the friction member is provided across a range of at least 180° around the axial center of the base.

In claim 4, note the projections (61) provided on the friction member.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over JP(05-83516). JP(05-83516) does not disclose the magnitude of the first damping force. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify JP(05-83516) so that the magnitude of the first damping force is 1.5 to 3.5 times that of the second damping force, since it has been held that discovering the optimum value of a result effective variable involves only routine skill in the art. *In re Boesch* , 617 F.2d 272, 205, USPQ 215 (CCPA 1980).

***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kotzab (4,813,915), Izutsu et al.(5,334,109), Serkh(5,632,697), Bakker(5,967,919), Imahara et al.(6,102,820) and Ayukawa et al.(6,497,632), DE(3728158) and JP(08-21498 disclose a tensioner with an arm, a tubular base member and a friction member.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marcus Charles whose telephone number is (703) 305-6877. The examiner can normally be reached on Monday -Thursday 7:30 am-600 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Bucci can be reached on (703) 308-3668. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3597 for regular communications and (703) 305-3597 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-2168.



Marcus Charles  
Primary Examiner  
Art Unit 3682  
July 8, 2003